

DEPARTMENT OF THE ARMY
Wilmington District, Corps of Engineers
Post Office Box 1890
Wilmington, North Carolina 28402-1890

Action ID No. 200400096

January 21, 2004

PUBLIC NOTICE

Mr. Raiford Trask, Cape Fear Rod Company, 302-A Raleigh Street, Wilmington, North Carolina 28412, has applied for a Department of the Army (DA) permit TO AUTHORIZE THE DISCHARGE OF FILL MATERIAL INTO APPROXIMATELY 531 LINEAR FEET OF PERENNIAL UNNAMED TRIBUTARY TO HOWE CREEK AND 0.024 ACRE OF A MANMADE WATER CONVEYANCE THAT CONNECTS TO THE UNNAMED TRIBUTARY, NORTH AND SOUTH OF SIR TYLER DRIVE, ON THE EAST SIDE OF MILITARY CUTOFF ROAD, IN WILMINGTON, NEW HANOVER COUNTY, NORTH CAROLINA.

The following description of the work is taken from data provided by the applicant and from observations made during a site visit by a representative of the Corps of Engineers. Plans submitted with the application show the installation of culvert pipe to facilitate the construction of a commercial development. Lots fronting along Military Cutoff Road, an area currently under heavy development, are of particular interest and include most of the proposed impacts. According to plans included with the application, two buildings labeled as restaurants, parking spaces, and a road crossing will cover the culverted system. Impacts are broken down into 200 linear feet of perennial stream channel on the north side of Sir Tyler Drive (labeled as area A on the attached plans), 331 linear feet of perennial stream channel on the south side of Sir Tyler Drive (area B), and 0.024 acre of drainage way located south of the stream channel on the south side of Sir Tyler Drive (area B). The purpose of the work is to construct a commercial development. Plans showing the work are included with this public notice.

There have been other permits issued for this development. A Nationwide Permit 26 was issued on September 29, 1999, for 0.13 acre of wetland impact associated with the construction of two road crossings on Sir Tyler Drive. A Nationwide Permit 39 was issued on February 12, 2001, for 0.01 acre of wetland impact associated with a drainage swale into wetlands from a stormwater pond on the eastern side of the development. Both of these permits were issued to Westfall Office Park.

The stream under consideration is a perennial tributary to Howe Creek, a tidal creek that discharges into the Atlantic Intracoastal Waterway. Howe Creek is designated as a SA, ORW water. Waters with the SA, ORW designation is defined as High Quality Waters by the North Carolina Division of Water Quality. The unnamed tributary channel has been altered historically. It has been channelized, but the channel is currently redeveloping sinuosity at the lower elevation. The southern section of the channel and the drainage way have a shrub and tree buffer,

but the northern portion (from just south of Sir Tyler Drive north) is cleared down to the banks with a variety of herbaceous plants including *Typha* sp. and young *Salix nigra* growing in and adjacent to the channel. The property around the southern section of the stream was timbered sometime within the last five years.

Conceptual mitigation has been proposed. On-site mitigation is proposed consisting of approximately 1,675 linear feet of stream restoration for a channel that the consultant characterizes as degraded, intermittent and perennial, and 2,360 linear feet of stream preservation including a 25-foot wide riparian buffer. The riparian preservation is approximately 2.71 acres, but it was unclear how much, if any, of this area is jurisdictional wetland. The proposed mechanism for preservation is a conservation easement. The exact location of restoration and preservation was not provided with the permit application.

The applicant has determined that the proposed work is consistent with the North Carolina Coastal Zone Management Plan and has submitted this determination to the North Carolina Division of Coastal Management (NCDCM) for their review and concurrence. This proposal shall be reviewed for the applicability of other actions by North Carolina agencies such as:

- a. The issuance of a Water Quality Certification under Section 401 of the Clean Water Act by the North Carolina Division of Water Quality (NCDWQ).
- b. The issuance of a permit to dredge and/or fill under North Carolina General Statute 113-229 by the North Carolina Division of Coastal Management (NCDCM).
- c. The issuance of a permit under the North Carolina Coastal Area Management Act (CAMA) by the North Carolina Division of Coastal Management (NCDCM) or their delegates.
- d. The issuance of an easement to fill or otherwise occupy State-owned submerged land under North Carolina General Statute 143-341(4), 146-6, 146-11, and 146-12 by the North Carolina Department of Administration (NCDA) and the North Carolina Council of State.
- e. The approval of an Erosion and Sedimentation Control Plan by the Land Quality Section, North Carolina Division of Land Resources (NCDLR), pursuant to the State Sedimentation Pollution Control Act of 1973 (NC G.S. 113 A-50-66).

The requested Department of the Army (DA) permit will be denied if any required State or local authorization and/or certification is denied. No DA permit will be issued until a State coordinated viewpoint is received and reviewed by this agency. Recipients of this notice are encouraged to furnish comments on factors of concern represented by the above agencies directly to the respective agency, with a copy furnished to the Corps of Engineers.

This notice initiates the Essential Fish Habitat (EFH) consultation requirements of the Magnuson-Stevens Fishery Conservation and Management Act. The District Engineer's initial determination is that the proposed project would not adversely impact EFH or associated fisheries managed by the South Atlantic or Mid Atlantic Fishery Management Councils or the

National Marine Fisheries Service.

This application is being considered pursuant to Section 404 of the Clean Water Act (33 U.S.C. 1344). Any person may request, in writing within the comment period specified in the notice, that a public hearing be held to consider this application. Requests for public hearing shall state, with particularity, the reasons for holding a public hearing.

The District Engineer has consulted the latest published version of the National Register of Historic Places for the presence or absence of registered properties, or properties listed as being eligible for inclusion therein, and this site is not registered property or property listed as being eligible for inclusion in the Register. Consultation of the National Register is the extent of cultural resource investigations by the District Engineer, and he is otherwise unaware of the presence of such resources. Presently, unknown archeological, scientific, prehistorical, or historical data may be lost or destroyed by work under the requested permit.

The District Engineer, based on available information, is not aware that the proposed activity will affect species, or their critical habitat, designated as endangered or threatened pursuant to the Endangered Species Act of 1973.

The decision, whether to issue a permit, will be based on an evaluation of the probable impacts, including cumulative impacts, of the proposed activity and its intended use on the public interest. Evaluation of the probable impacts that the proposed activity may have on the public interest requires a careful weighing of all those factors that become relevant in each particular case. The benefits that may be expected to accrue from the proposal must be balanced against its foreseeable detriments. The decision whether to authorize a proposal, and if so the conditions under which it will be allowed to occur, are therefore decided by the outcome of the general balancing process. That decision should reflect the national concern for both protection and use of important resources. All factors that may be relevant to the proposal must be considered including the cumulative effects of it. Among those are conservation, economics, aesthetics, general environmental concerns, wetlands, cultural values, fish and wildlife values, flood hazards and flood plain values (according to Executive Order 11988), land use, navigation, shore erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, considerations of property ownership, and, in general, the needs and welfare of the people. For activities involving the placement of dredged or fill materials in waters of the United States, a permit will be denied if the discharge that would be authorized would not comply with the Environmental Protection Agency's 404(b)(1) guidelines. Subject to the preceding sentence and any other applicable guidelines or criteria, a permit will be granted unless the District Engineer decides that it would be contrary to the public interest.

The Corps of Engineers is soliciting comments from the public; Federal, State and local agencies and officials; Indian Tribes and other interested parties to consider and evaluate the impacts of this proposed activity. Any comments received will be considered by the Corps of Engineers to decide whether to issue, modify, condition or deny a permit for this proposal. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects and the other public interest factors listed

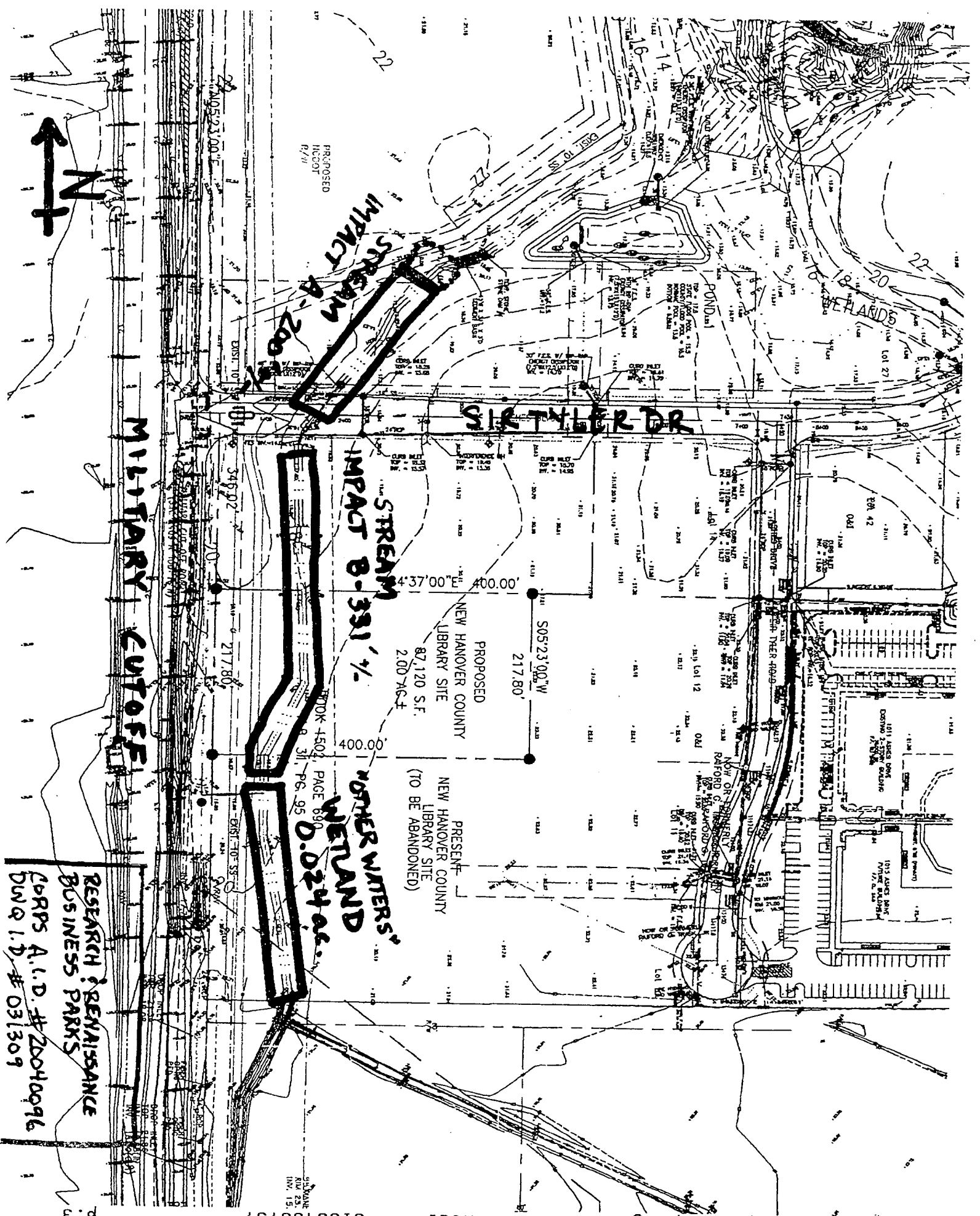
above. Comments are used in the preparation of an Environmental Assessment (EA) and/or an Environmental Impact Statement (EIS) pursuant to the National Environmental Policy Act (NEPA). Comments are also used to decide the need for a public hearing and to decide the public interest of the proposed activity.

Generally, the decision whether to issue this Department of the Army (DA) permit will not be made until the North Carolina Division of Water Quality (NCDWQ) issues, denies, or waives State certification required by Section 401 of the Clean Water Act. The NCDWQ considers whether the proposed activity will comply with Sections 301, 302, 306, and 307 of the Clean Water Act. The application and this public notice for the Department of the Army (DA) permit serves as application to the NCDWQ for certification.

Additional information regarding the Clean Water Act certification may be reviewed at the offices of the Environmental Operations Section, North Carolina Division of Water Quality (NCDWQ), Salisbury Street, Archdale Building, Raleigh, North Carolina. Copies of such materials will be furnished to any person requesting copies upon payment of reproduction costs.

All persons wanting to make comments regarding the application for Clean Water Act certification should do so in writing delivered to the North Carolina Division of Water Quality (NCDWQ), 1650 Mail Service Center, Raleigh, North Carolina 27699-1650, on or before February 14, 2004, Attention: Mr. John Dorney.

Written comments pertinent to the proposed work, as outlined above, will be received in this office, Attention: Ms. Angie Pennock, until 4:15 p.m., February 20, 2004, or telephone (910) 251-4611.



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